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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,459

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Andreas Christel

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10/30/2008

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EXAMINER

MESH, GENNADIY

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

10/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,459

Applicant(s)

CHRISTEL ET AL.

Examiner

GENNADIY MESH

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-25 is/are pending in the application.
- 4a) Of the above claim(s) 17-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's Amendment filed on October 20, 2008 is acknowledged.

Rejection is maintained as it was set forth in previous office action mailed on July 31, 2008.

Status of Claims

1. Claim 23 as depended on withdrawn Claims 17 - 20 should be also withdrawn. Because claims 17 - 20 were withdrawn as Non-elected and Claim 23 is in the format of product by process claim and for this reason can not be part of Group I (group drawn to Method of producing hollow body).

Note, Claim 23 was not part of rejection presented in previous Office action mailed out on July 31, 2007 and was indicated as "withdrawn" by Applicant (see Claims filled on October, 20, 2008).

During phone conversation on October 20, 2008, applicant representative Franc Hand has confirmed that Claim 23 should be withdrawn as Non-elected. Based on this understanding Claim 23 is withdrawn by Examiner.

Claims 1- 6 and 8 - 16 are active. Claim 7 is cancelled. Claims 17 - 25 are withdrawn.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1 - 5, 9 - 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Schiavone (US 2001/0034431).

The rejection was adequately set forth in paragraph 5 of the Office action mailed on July 31, 2008 and is incorporated herein by reference.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action

2. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schiavone (US 2001/0034431) in view of Yamada et al. (US 4,217,161).

The rejection was adequately set forth in paragraph 6 of the Office action mailed on July 31, 2008 and is incorporated herein by reference.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schiavone (US 2001/0034431) in view of Smith et al. (4,482,586) combine with evidence given by Crawford, Roy J.; Throne, James L.; Rotational Molding: Introduction and Chapter 6; 2002.

The rejection was adequately set forth in paragraph 7 of the Office action

mailed on July 31, 2008 and is incorporated herein by reference.

4. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiavone (US 2001/0034431) in view of Duh (US 2002/0026030).

The rejection was adequately set forth in paragraph 8 of the Office action mailed on July 31, 2008 and is incorporated herein by reference.

Response to Arguments

5. Applicant's arguments filed October 20, 2008 have been fully considered but they are not persuasive.

5.1. Applicant's arguments related to Claims 1 - 5, 9 - 13 and 16 rejected under 35 U.S.C. 102(b) as being anticipated by Schiavone (US 2001/0034431) based on following:

a) resin particles disclosed by Schiavone are not spherical and do not have diameter of 2 mm or less and

b) polyethylene terephthalate claimed by Applicant has more than 94 mol% of ethylene glycol and for this reason is different with polyethylene terephthalate disclosed by Schiavone (in one of embodiment).

5.2. Regarding first argument note, because Specification or claims do not provide sufficient support or requirements that drop shaped or ball like shape particles claimed by Applicant **must be spherical**, than broadest reasonable interpretation will be given to terms "drop shape "or "ball like shape " and for this reason " drop shape" or " ball like

shape" particles may not be spherical and will have at least two different characteristic dimensions which are not equal to each other.

Because particles disclosed by Schiavone have average minimum dimension about 1 mm to about 10 mm, some of the particles will meet limitation of Applicant Claim 1. In addition note, that Schiavone does teach that spherical particles with diameter **less than 1 mm** " are essentially fines" and known in prior art (see [0083]).

Note, that "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." In re Heck, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting In re Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968))

Thus, particles of any shape with characteristic dimensions more than 1 mm are included in disclosed invention of Schiavone and for this reason, this Applicant argument is not persuasive.

5.3. Regarding second statement note (as was stated in rejection (see Office action mailed in July 31, 2008) because specification did not provide sufficient guidance how ordinary skill should understand **"approximately 100%** of terephthalic acid" , that it will be understood as **" about 100%** of terephthalic acid" , which generally means plus or minus 10% from the point - in this case it will constitute the range from 90wt% to the 100wt.% of terephthalic acid .

Also note, that use of "about" is warning that exactitude is not claimed but rather a contemplated variation. When there is no substantial or material difference in the

product, there is in fact literal readability, if proper weight is given to the qualifying word "about" to amounts significantly lower or higher than the numerically claimed limitation. *Kolene Corp. v. Motor City Metal Treating, Inc.* (DC EMich) 163 USPQ 214.

Because applicant did not provide any arguments against this understanding of term "**approximately**", the rejection based on understanding of this term (see above) is proper and sound.

In addition note, that. ..." A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including **nonpreferred** embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). *See also Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998) (The court held that the prior art anticipated the claims even though it taught away from the claimed invention).

"Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments." *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. MPEP 2123

Polyester of Schiavone must include at least 7 percent of comonomer as a sum of diacid and diol comonomers (see Abstract) , therefore any composition that satisfied this requirement are disclosed by Schiavone, including those that claimed by Applicant.

For this reasoning second argument provided by Applicant is not persuasive.

5.3. Applicant's arguments related to Claims 14 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Schiavone (US 2001/0034431) in view of Duh (US 2002/0026030) based on statement that Duh teaches away from Applicant invention of using short preheating time, because "PET granules become sticky because of rapid rise of polymer temperature".

As it was explained in previous rejection, mailed on July 3, 2008, Duh teach that "during preheating step granules of PET (polyethylene terephthalate) becomes sticky because of the rapid rise of the temperature. Therefore, a preheater, which could be a fluid bed or agitated heat transfer unit, **must provide agitation** or forced motion to prevent agglomeration of PET granules" and " residence time in the preheater ranges from a few minutes to about 60 minutes, depending on the type of the preheater used"- see [0006].

It is clear, that Duh recognized possibility that granules will stick together and provide solution how overcome this problem by teaching that granules must be agitated. Therefore, Duh is not teaching away from fast heating of granules, but actually provide guidance to one of ordinary skill how to perform with benefit of rapid rise of the temperature (short residence time and higher output). Also note, that range of preheating time taught by Duh is overlapping with range claimed by Applicant.

Therefore, all Applicant's arguments were found unpersuasive.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GENNADIY MESH whose telephone number is (571)272-2901. The examiner can normally be reached on 10 a.m - 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272 1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gennadiy Mesh
Examiner
Art Unit 1796

/GM/

/Vasu Jagannathan/
Supervisory Patent Examiner, Art Unit 1796